

## REMARKS

By this Amendment, Applicants have amended the specification, canceled claim 156 without prejudice or disclaimer, and amended claims 12, 19, 39, 40, 53, 61, 83, 100, 111, 120, 121, 135, 155, and 158. No new matter has been added. The changes to the specification and claims, unless otherwise noted herein, are made in order to correct inadvertent errors of a minor and/or typographical nature, and should not be construed as narrowing the scope of the claims.

As an initial matter, Applicants appreciate the Examiner's indication that claims 92-115 and 142-154 are allowed, and that claims 3-15, 29-37, 41-49, 70-78, 80-86, 119, 124, 125, 127-130, and 132-136 contain allowable subject matter.

In the Office Action, claims 1, 2, 16-26, 28, 38-40, 50-60, 62, 63, 116-118, 120-123, 126, 131, and 137-140 were rejected either under 35 U.S.C. § 102(b) or under § 103(a) based on Stenz (U.S. Patent No. 1,741,080). The only independent claims rejected based on the Stenz reference are claims 1 and 28, which were rejected under § 102(b). Applicants respectfully disagree with those rejections because the Stenz reference does not disclose all of the subject matter recited in those claims, as will be explained in more detail below.

### Independent Claim 1

Independent claim 1 recites a matching chart including, among other recitations, "at least one comparison sample . . . configured to simulate . . . at least one appearance characteristic other than color of [a] keratinous element."

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
www.finnegan.com

The Stenz reference neither discloses nor suggests at least that subject matter recited in claim 1. The Stenz reference discloses sample cards that are formed by a single sheet of paper or other suitable material that is folded along a line 1, dividing the sheet into a sample card 2 and a cover 3 for the sample card 2. The cover 3 may include an ornamental and advertising feature on both faces or may contain any other desired data. The sample cards 2 may include a plurality of colored sections or panels 4 that may be separated by perforated or weakened lines 5 to enable the sections or panels 4 to be removed. Each section or panel 4 may contain on its face a color area and all of the sections or panels may show the same color but different tints thereof. The Stenz reference, however, does not disclose or suggest “at least one comparison sample . . . configured to simulate . . . at least one appearance characteristic other than color of [a] keratinous element.”

The Office Action’s rejection statement cites to page 1, lines 64-67, of the Stenz reference, which discloses that “[e]ach panel or section contains on its face a color area and all of the sections may show the same color but different tints thereof.” Office Action at 2. The rejection is apparently based on some form of an assertion that characterizes “tints” as a characteristic other than color. Applicants note, however, that the ordinary definition of the term, “tint,” means “[a] shade of color . . .” See, e.g., The American Heritage College Dictionary 1419 (3d ed. 2000). Furthermore, the Stenz reference neither explicitly nor implicitly modifies that ordinary meaning of “tint.” In other words, the Stenz panels or sections may show different shades of the same color, which is still a color characteristic, not an appearance characteristic other than color.

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
www.finnegan.com

Therefore, the Stenz reference does not disclose all of the subject matter recited in Applicants' independent claim 1. Accordingly, independent claim 1 should be allowable.

Independent Claim 28

Independent claim 28 recites a system including, among other recitations, "a plurality of comparison samples . . . configured to simulate . . . at least one appearance characteristic other than color of [a] keratinous element."

For reasons similar to those outlined above with respect to claim 1, the Stenz reference does not disclose at least the above-recited subject matter in independent claim 28.

In addition to the rejection of claim 28 under 35 U.S.C. § 102(b) based on the Stenz reference, claims 64-69, 79, and 87-91 were rejected under either 35 U.S.C. § 102(b) or under § 103(a) based on the Hirsch et al. reference. Because those claims each ultimately depend from independent claim 28, it appears those rejections are based on implicit allegation that the Hirsch et al. reference discloses the subject matter recited in claim 28. Applicants respectfully disagree with that allegation, as will be explained in more detail below.

The Hirsch et al. reference discloses a system for on-site formulation of a personalized hair color maintenance shampoo product for individual users according to the hair tone and color. The system includes a mixing bottle 10 and a data-base matrix information chart 20 that provides a number of formulations 22 correlated against the volumetric indicia of the mixing bottle 10. The chart 20, along with the mixing bottle 10, includes a series of formulations 22 representative of desired formulations of basic

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
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colored shampoos to prepare a hair color maintenance shampoo product appropriate for a given person's hair tone and cosmetically altered or natural hair color 26. An orderly arrangement of hair colors 24 on the chart 20 provides a colorist with a relative guide to altering formulations 22 to meet a particular client's hair color or tone.

The Office Action's rejection statement is apparently relying on the portion of the Hirsch et al. disclosure relating to "tone" as disclosing an appearance characteristic other than color. See Office Action at 3 (citing to col. 7, line 50, through col. 8, line 14, of the Hirsch et al. reference, which relates hair color or tone). Applicants note, however, that the ordinary meaning of the term, "tone," is "[a] color or shade of color." See, e.g., The American Heritage College Dictionary 1424 (3d ed. 2000). In addition, the Hirsch et al. reference neither explicitly nor implicitly modifies that ordinary meaning of "tone." Therefore, the Hirsch et al. reference does not disclose all of the subject matter recited in Applicants' independent claim 28. Accordingly, claim 28 should be allowable.

#### Independent Claim 155

In the Office Action, claims 155-158 were rejected under 35 U.S.C. § 102(e) based on Bazin et al. (U.S. Patent Application Pub. No. US 2002/0065456). Applicants have incorporated the subject matter of claim 156 into claim 155, canceled claims 156 without prejudice or disclaimer, and rewritten claim 158 in dependent form by incorporating the subject matter of claim 155 into that claim. Applicants respectfully submit that the Bazin et al. reference does not disclose or suggest all of the subject matter recited in either amended claim 155 or amended claim 158.

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
[www.finnegan.com](http://www.finnegan.com)

Independent claim 155 recites a method of enabling an analysis of a keratinous element including, among other recitations, "comparing the keratinous element with . . . at least one image [simulating an appearance of a keratinous element] to determine if the at least one image substantially corresponds to the color and the at least one appearance characteristic other than color of the keratinous element."

The Bazin et al. reference does not disclose at least that subject matter recited in independent claim 155. The rejection statement of claim 156 asserts that page 3, paragraph [0034] discloses "comparing the element with the at least one image to determine if the image substantially corresponds to the color and appearance characteristic of the element." Office Action at 6. Applicants respectfully disagree with that assertion about what that portion of the Bazin et al. reference discloses. That portion of the Bazin et al. reference discloses "the analysis of the characteristic may include comparing an image (emphasis supplied) formed from the scanned image data to at least one image (emphasis supplied) formed from image data stored in an image database." Page 3, paragraph [0034], lines 6-9. No comparison is made between at least one image and an actual keratinous element, as recited in amended claim 155. Therefore, independent claim 155 should be allowable.

#### Independent Claim 158

Independent claim 158 recites a method of enabling an analysis of a keratinous element including, among other recitations, "transmitting at least one image . . . configured to simulate a color and at least one appearance characteristic other than color of the keratinous element; and receiving information relating to a comparison

between at least one keratinous element and the at least one image." For reasons similar to those mentioned above with respect to claim 155, the Bazin et al. reference does not disclose at least that subject matter recited in independent claim 158. Therefore, independent claim 158 should be allowable.

In the Office Action, claims 27, 61, and 141 were rejected under 35 U.S.C. § 103(a) based on Stenz in view of Kamen et al. (U.S. Patent No. 5,150,791). Since each of those claims depends from either claim 1 or claim 28, those dependent claims should be allowable for at least the same reasons as claims 1 and 28, respectively. Furthermore, the Kamen et al. reference fails to overcome the deficiencies of the Stenz, Hirsch et al., and/or Bazin et al. references.

### Conclusion

For at least the reasons set forth above, independent claims 1, 28, 155, and 158 should be allowable. Dependent claims 2-27, 29-154, and 157 depend respectively from independent claims 1, 28, and 155. Consequently, those dependent claims should be allowable for at least the same reasons the claims from which they depend are allowable.

Therefore, Applicants respectfully request the reconsideration of this application, the withdrawal of the outstanding claim rejections, and the allowance of claims 1-155, 157, and 158.

If the Examiner believes that a telephone conversation might advance prosecution, the Examiner is cordially invited to call Applicants' undersigned representative at (571) 203-2739.

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
[www.finnegan.com](http://www.finnegan.com)

Applicants respectfully submit that the Office Action contains numerous assertions relating to the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicants decline to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

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By:

  
Christopher T. Kent  
Reg. No. 48,216

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
[www.finnegan.com](http://www.finnegan.com)